

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARMANDO GUZMAN AND JOSE GARCIA,
individually and on behalf of all persons similarly
situated who were employed by VLM, INC. d/b/a
RELIABLE BAKERY,

07-CV-1126 (JG)(RER)

Plaintiffs,

-against-

AFFIDAVIT

VLM, INC. D/B/A RELIABLE BAKERY, AND
JOSEPH VITACCO,

Defendants.

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STATE OF NEW YORK)
)ss:
COUNTY OF KINGS)

JOSEPH VITACCO, being duly sworn, deposes and says:

1. I am the President of VLM, Inc. d/b/a Reliable Bakery ("Reliable Bakery").
2. I submit this Affidavit in opposition to Plaintiffs' Motion for Class Certification and Collective Action Status.
3. Reliable Bakery paid all employees at least minimum wage and 1.5x their regular rate for all hours they worked over forty (40). There are several departments at Reliable Bakery: (1) baking; (2) packing; (3) oven; and (4) maintenance.
4. Besides being paid their regular wages and overtime wages, Reliable Bakery employees are paid additional incentive pay for working their entire schedule for the week. This incentive pay is a bonus, and varies depending on the week and the employee.
5. I would like to emphasize the fact that Reliable Bakery employees are paid based on an hourly rate, and not a daily rate. Contrary to what Plaintiff Armando Guzman ("Guzman") has alleged in the past, I never told Guzman that I was paying him a daily rate, or that I was paying the rest of the employees the same way that Guzman was being paid.
6. The affidavits of ten (10) Reliable Bakery employees attest to the fact that they were paid at least minimum wage, overtime wages for all hours worked over forty (40)

hours in a week, as well as additional incentive pay that varied depending on the week and the employee. See Affidavits of Marcelino Carrasco, Margarito Cruz, Jesus Martinez, Ernesto Lopez, Julio Martinez, Nicholas Hernandez, Vito Vitale, Jameer Baksh, Tasadaq Husain and Andrea Plastina, attached hereto as Exhibit "A".

7. On the other hand, while Plaintiffs claim that two hundred fifty (250) employees of Reliable Bakery have not received minimum wage and/or overtime pay, they have submitted only four (4) affidavits from employees who claim that they were not paid correctly.

8. In fact, as fact per the Court's order dated October 26, 2007, Reliable Bakery produced a list of names and addresses of one hundred thirty-three (133) employees (the list is attached hereto as Exhibit "B"). As noted by the list, the vast majority of employees live in Brooklyn, New York.

9. Accordingly, I respectfully request that the Court deny Plaintiffs' motion on the grounds that they have not adequately proven that a sufficient number of employees have been harmed.

10. In addition, Guzman seeks to be a representative of the proposed class. However, there are several reasons why the Court should deny the request.

11. On December 25, 2005, Guzman pulled the alarm off the wall at the bakery. When I confronted him, Guzman lied until I showed him a video tape showing him ripping the alarm off the wall. The alarm is very important to the baking process because it was used to alert the bakers when there was too little moisture in the ovens during the baking process. If the bread does not receive sufficient water it will be too dry. (Photos of Mr. Guzman ripping down the alarm are attached hereto as Exhibit "C").

12. Guzman said he would never do it again.

13. Yet, on or about January 1, 2006, Guzman threw some dough at a wall clock and destroyed the clock. Guzman could also have injured his fellow employees by his careless act.

14. As a result of these two (2) incidents, Guzman was terminated from his employment at Reliable Bakery.

15. These two (2) incidents highlight why Guzman should not be a representative for any class.


JOSEPH VITACCO

Sworn to before me this

31 day of January 2008


LISA J. TRAPANI
Notary Public, State of New York
No. 01TR4965987
Qualified in Kings County
Commission Expires April 30, 2010